IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETER VAKKAS and PLAZA FURS, INC., Plaintiffs,	:	CIVIL ACTION
v.	:	No. 98-4981
TYSON ASSOCIATES, JERALD MIRROW, JEROME BALKA, ESQ., LARRY SCHWALB, LOUIS RUGGIERO, OFFICER JOHN LOISCH, CORPORAL DAVID RIZZO, CAPTAIN GERARD LEVINS, CITY OF PHILADELPHIA, and MAXIMUM PROTECTION INDUSTRIES, INC., D/B/A SECURITYLINK, Defendants.	:	

MEMORANDUM

R.F. KELLY, J. MARCH 28, 2000

This action arises out of a self-help repossession by the Defendant-landlord Jerald Mirrow ("Mirrow"), assisted by other Defendants, of a commercial leased property and inventory therein due to the Plaintiff- tenants' alleged failure to comply with their financial obligations under the lease agreement. Plaintiffs Peter Vakkas and Plaza Furs, Inc. (respectively "Vakkas" and "Plaza," and collectively "Plaintiffs") allege a violation of 42 U.S.C. section 1983 ("section 1983"), as well as the following state law claims: conversion; trespass against land and chattels; wrongful eviction; wrongful distraint; tortious interference with contractual relations; civil conspiracy; breach of contract; wrongful care, custody and control of personal

property; intentional infliction of emotional distress; and negligence.

Presently before this Court are the following Motions: (1) Motion for Summary Judgment of Defendants City of Philadelphia ("the City"), Captain Gerard Levins ("Levins"), Corporal David Rizzo ("Rizzo"), and Police Officer John Loisch ("Loisch"); (2) Motion for Summary Judgment of Defendant Larry Schwalb ("Schwalb"); (3) Motion for Summary Judgment of Defendant Jerome Balka, Esquire ("Balka"); (4) Motion for Summary Judgment of Defendant Mirrow; and (5) Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment of Defendant SecurityLink from Ameritech, Inc. ("SecurityLink")[1]. For the reasons that follow, summary judgment is granted in favor of Defendants Balka, Mirrow, Loisch, Rizzo, Levins, Schwalb, Tyson, Ruggiero and the City of Philadelphia on the 42 U.S.C. section 1983 claim[2], and we will decline to exercise supplemental

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[1] SecurityLink contends that it has been incorrectly named in Plaintiffs' pleadings as Maximum Protection Industries, Ltd. We will assume that SecurityLink's version of its own name is correct.

[2] Plaintiffs do not oppose the summary judgment motion of Defendant Levins and the City with regard to the section 1983 claim (although the Amended Complaint does not name the City as a defendant with regard to this claim.) Pls.'s Resp. Opp'n Defs.' City of Philadelphia, Levins, Rizzo and Loisch Mot. Summ. J. at 2. Moreover, although Defendants Tyson and Ruggiero have not filed summary judgment motions, because no state action existed in this case, as will be discussed later, there is no claim under 42 U.S.C. section 1983 as to any of the Defendants.

jurisdiction on all of the remaining state law claims.

I. BACKGROUND.

Plaza is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its registered office at 7043-45 Castor Avenue in Philadelphia, Pennsylvania ("the property"). Vakkas is the principal owner of Plaza. The property is owned by Tyson Associates ("Tyson"), a business entity organized and existing under the laws of the Commonwealth of Pennsylvania. Mirrow is the sole owner of Tyson.

On April 15, 1994, Tyson and Plaza entered into a lease for the property. For approximately thirty years prior to that transaction, Tyson operated a fur business on the premises. Following the forming of the lease agreement, Plaza also operated a fur business on the property.

In February, 1997, a dispute arose between the parties over Plaza's alleged failure to comply with its obligations under the lease. Vakkas was on vacation in New Jersey from August 1, 1997 through August 16, 1997, during which time the fur store was closed. On August 12, 1997, Mirrow sent Vakkas a letter indicating Tyson's intent to enter the property on August 14, 1997 and seize inventory, allegedly pursuant to the terms of the April, 1994 lease. The August 12, 1997 letter was purportedly delivered to Vakkas at the property and at his residence in Stroudsberg, Pennsylvania. However, Vakkas claims that because

he was out of town on and around that date, he did not receive the letter until after August 14, 1997, the date on which the events giving rise to this lawsuit occurred.

The property was equipped with an alarm system installed and operated by SecurityLink. SecurityLink had a contractual agreement with Plaza which required SecurityLink to provide alarm protection services for the property in the event of attempted burglaries. Sometime prior to August 14, 1997, Balka contacted SecurityLink and informed it that Tyson, Mirrow, Balka, Schwalb and Ruggiero planned to enter the property on August 14, 1997 and remove the fur inventory contained therein. Plaza claims SecurityLink did not notify Vakkas or Plaza of this conversation.

On August 14, 1997, Balka, accompanied by Mirrow, who waited outside, entered the Second Police District at Harbison and Levick Streets in Philadelphia and informed a police officer[3] of Mirrow's plans to enter the property and remove inventory pursuant to the lease agreement.

According to Plaintiffs, at approximately 9:00 a.m. on August 14, 1997, the lock to the property was broken by Defendant Larry Schwalb, a locksmith. Once inside, Mirrow, Balka, and Ruggiero and approximately seven other individuals

[3] While Plaintiffs claim that Balka spoke to Rizzo, Balka claims that he does not recollect which officer to whom he spoke.

proceeded to remove approximately $200,000 to $500,000 of furs from the property.

A few minutes after entrance to the property had been gained, Defendant Officer Loisch arrived on scene pursuant to a radio call of a burglary in progress. When Loisch arrived, Balka introduced himself to Loisch as an attorney and gave him his business card. Balka also explained to him that Mirrow had entered the property to remove inventory pursuant to the lease, and that he, Balka, had spoken to Loisch's supervisor at the Second Police District. Loisch observed a locksmith, a moving truck and individuals moving items out of the property.

Loisch called Rizzo on Rizzo's private line using Balka's cellular telephone. Rizzo informed Loisch that he was "aware of the situation" and to stand by and "get everybody's information." Loisch was on the scene for approximately thirty minutes, after which time he returned to duty. He subsequently prepared a Form 48 Incident Report describing the events of August 14, 1997, which he later submitted to Rizzo.

Vakkas stopped by the property in the late afternoon on August 14, 1997 and discovered that the store was padlocked and empty. He was informed by neighbors that Mirrow had come with police that morning and removed the furs from the premises. Subsequently, Plaza, represented by counsel, filed an action against Tyson in the Court of Common Pleas in Montgomery County

seeking the return of the furs and emergency access to the premises. On August 28, 1997, Plaza was granted injunctive relief to return of the property, and the seized furs were ordered detained in storage. Balka gave Vakkas the key to the property. Tyson was required to provide an inventory of the merchandise seized on August 14, 1997. Tyson claimed there were 191 furs in storage, although Vakkas claims that 255 furs were seized.

Much of the seized inventory had been consigned. Following the events of August 14, 1997, Plaza was unable to obtain replacement goods from its consignment suppliers, because the suppliers feared another seizure. In September, 1997, Plaza filed for Chapter 11 bankruptcy protection. During the bankruptcy, Mirrow and Balka sought retention of the unlawfully seized goods. On January 15, 1998, Plaza's bankruptcy petition was dismissed, and Plaza went out of business on or about February 28, 1998.

As a result of the above described events, Vakkas and Plaza filed the instant action in this Court on September 14, 1999.

II. STANDARD OF REVIEW.

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in

dispute and `the moving party is entitled to judgment as a matter of law.'" Hines v. Consolidated Rail Corp., 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

III. DISCUSSION.

COUNT I: 42 U.S.C. Section 1983 Claim.

Plaintiffs assert a violation of their constitutional rights under section 1983 by Defendants Mirrow, Balka, Schwalb, Loisch, Rizzo, Levins, Ruggiero, Tyson, and the City of

Philadelphia. "Section 1983 provides a cause of action for violations of federally secured statutory or constitutional rights 'under color of state law.'" Abbott v. Latshaw, 164 F.3d 141, 145 (3d Cir. 1998), cert. denied, George v. Abbott, 119 S.Ct. 2393 (1999). A plaintiff must meet two requirements when bringing a claim under section 1983. Open Inns, Ltd. v. Chester County Sheriff's Dep't, et al., 24 F.Supp.2d 410, 423 (E.D.Pa. 1998). First, a plaintiff must establish a violation of a right secured by the Constitution and laws of the United States. Id. (citing Baker v. McCollan, 443 U.S. 137, 140 (1979)). Second, the plaintiff must prove that the defendant deprived him of these rights under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory. Id. (citations omitted). Conduct which satisfies the state action requirement of the Due Process Clause qualifies as "under color of state law" for purposes of section 1983. Abbott, 164 F.3d at 145.

Plaintiffs claim that as a result of the incidents leading up to and on August 14, 1997 which culminated in the repossession of the property and removal of the furs, Rizzo, Loisch and Levins "conspired with [Defendants] Balka and Mirrow to violate plaintiffs'(sic) rights under the Fourth and Fourteenth Amendments. . ." Pls.'s Resp. Opp'n Defs.' City of Philadelphia, Levins, Rizzo and Loisch Mot. Summ. J. at 10. More specifically, Plaintiffs contend that the defendants violated

their Fourth and Fourteenth Amendment rights by acting in concert with the private defendants to assist in the search of the property, and seizure of the furs therein, without a court order.

"The Supreme Court has long recognized that the Fourth Amendment's prohibition of unreasonable searches and seizures is applicable to commercial premises as well as to private homes. . . . An owner of a business thus has an expectation of privacy in commercial property, which society is prepared to consider to be reasonable." Open Inns, Ltd., 24 F.Supp.2d at 423-4 (citations omitted). In order to establish a claim under the Fourth Amendment, a plaintiff must show that the actions of the defendant:(1) constituted a "search" or "seizure" within the meaning of the Fourth Amendment, and (2) were "unreasonable" in light of the surrounding circumstances. Id. at 424. Further, in order to establish a violation of Fourteenth Amendment rights under section 1983, a plaintiff must demonstrate that the defendant's actions deprived him of life, liberty, or property without due process of law. Ploucher v. City of Philadelphia, NO.CIV.A. 94-7036, 1995 WL 458980, at *4 (E.D.Pa. July 31, 1995).

Plaintiffs' section 1983 claim is based upon a conspiracy theory, aimed at depriving Plaintiffs of their constitutional rights. Plaintiffs claim that

> the evidence and all reasonable inferences arising therefrom establish a hub-and-spoke conspiracy between Balka, Mirrow and the two policemen. Prior to the break-in, Balka and Mirrow (the hub) agreed to

> formulate a plot with police to break into Plaintiffs'' premises. In accordance with this plan, Balka and Mirrow went to the police station on the morning of August 14, 1997. Balka met ex parte with Corporal Rizzo (the spoke), who agreed to furnish police protection for the break-in at the premises on August 14, 1997 despite the absence of a court order. Corporal Rizzo met with Officer Loisch (another spoke) at police headquarters prior to the break-in and instructed Officer Loisch to stand by the premises during the break-in and conduct a "sham investigation" in order to give the operation an appearance of legality and protect the looters inside the premises. Officer Loisch willingly carried out Corporal Rizzo's instructions by remaining at Plaza's premises for a half-hour; ignoring police regulations to contact his (Officer Loisch's) immediate superiors with questions concerning the break-in; communicating with Corporal Rizzo via Balka's private cellphone instead of via police radio channels, thus preventing other police officers from learning about the illegal plot; and deliberately failing to gather details about the break-in that any legitimate investigation would have produced.

Pls.' Brief Opp'n Def. Balka's Mot. Summ. J. at 18-19.

Because section 1983 requires that the deprivation of rights be under color of state law, the actions of the police officers are very significant. It is undisputed that Rizzo was at no time at the scene of the repossession on August 14, 1997. Therefore, crucial to Plaintiffs' claim that the requisite state action existed are the actions or omissions of Loisch, who actually did appear on the scene. Plaintiffs' description of Loisch's involvement in this case subsequent to arriving on scene on August 14, 1997 is as follows

> [he] did nothing to protect the constitutional and property rights of Vakkas and Plaza. . . .In fact, Loisch took control of the situation, supervised the

> unlawful break-in, and provided substantial assistance, by aiding and abetting Mirrow, Balka, Schwalb, Ruggiero and their crew in violation of the sanctity of Plaza's store, removal and misappropriation of its entire inventory, changing all locks, and totally denying Plaza access to the premises . . . . At the very least, Loisch's conduct was reckless."

Am. Compl. at 11. Moreover, Plaintiffs claim that

> Defendant Loisch turned the Form 48 over to his immediate supervisor, Defendant Rizzo, who likewise with reckless disregard and intentional disregard for the rights and property of Vakkas and Plaza, took no action against the burglars/raiders, or to assure that the property in whose seizure and removal Defendant Loisch acquiesced was safeguarded and accounted for . . . . The reckless and intentional actions of Defendant Rizzo were likewise in violation of the constitutional and statutory rights of Vakkas and Plaza.

Id.

The case law dealing with police involvement in private repossessions resulting in 1983 actions provides a range of scenarios, some of which lead to liability and some of which do not. Abbott v. Latshaw, 164 F.3d 141 (3d Cir. 1998), provides an example of police involvement which is surely insufficient to constitute state action sufficient to sustain a claim under 1983. In Abbott, the United States Court of Appeals for the Third Circuit held that the mere presence of police officers at the scene of a private repossession, without more, does not constitute state action for purposes of section 1983. Id. at 147. See also United States v. Coleman, 628 F.2d 961, 964 (6th Cir. 1980)(police officers parked nearby watching at request of creditor as agents of creditor repossessed the plaintiff's truck,

but who never left their car during the repossession, had merely acquiesced to "stand by in case of trouble" and therefore state action did not exist).

In Sherry v. Associates Commercial Corp., 60 F.Supp.2d 470 (W.D.Pa 1999), aff'd, Sherry v. Associates Commercial Corp., 191 F.3d 445 (3d Cir. 1999), police were present during a private repossession by defendants, Associates, of two tractor trailer trucks. Id. at 472. During the repossession, Associates presented the police with an illegible facsimile of a document, which the officer told the plaintiffs was "a repo order." Id. The officer also told the plaintiffs that they had to "let them have the trucks." Id. Accordingly, Plaintiffs claimed that they did not resist the repossession. Id. The court found that the police officers' presence on the scene was merely to preserve the peace, and not to assist in the repossession. Id. at 475. Accordingly, the court held that the "police officers' aid was not significant since it contributed nothing to the remedy of self-help repossession which [Associates] was free to pursue in the officers' absence," and that, therefore, no constitutional deprivation occurred. Id.

However, the question of whether state action exists becomes less clear when the police officers' involvement constitutes more than merely standing by. Therefore, "[o]nly by sifting facts and weighing circumstances can the nonobvious

involvement of the State in private conduct be attributed its true significance." Luger v. Edmondson Oil Co., Inc., 457 U.S. 922, 939 (1982)(quoting Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961)). In Menchacha v. Chrysler Credit Corp. et al., 613 F.2d 507 (5th Cir. 1980), agents for the defendant-seller went to the home of the plaintiffs, the Menchachas, to repossess the plaintiffs' automobile, due to past due payments. Id. at 510. When Mr. Menchacha began to use "loud and abusive language," the police were called. Id. One of the police officers informed the plaintiffs that repossession was a civil matter and that the only reason the police were present was to "quiet a reported disturbance." Id. The officer also informed Mr. Menchacha that he could be arrested if he continued to use loud, abusive language and to breach the peace. Id. The officers left the scene before the actual repossession took place. Id.

In support of their 1983 claim, the plaintiffs testified that they gave up possession of their car because the police led them to believe they had no choice. Id. at 511. The district court dismissed the matter for lack of subject matter jurisdiction, finding that there was no conspiracy and no other indicia of state involvement and, therefore, no state action. Id. at 512. The United States Court of Appeals for the Fifth Circuit affirmed, stating that "the testimony failed to show

[police] intervention and aid." Id. at 513.

In Harris v. City of Roseburg, 664 F.2d 1121 (9th Cir. 1981), a police officer was present, at the creditor's request, during the creditor's repossession of a semi-tractor purchased by the plaintiff. Id. at 1124. During the repossession, the police officer told the plaintiff to "stand back or get away," that the creditors had come to repossess the truck and that he, the police officer, was simply present to "stand by." Id. The court found that there was sufficient evidence that the police officer's presence prevented the plaintiff from resisting the repossession. Id. at 1127. Moreover, the court held that

> there may be a deprivation within the meaning of § 1983 not only when there has been an actual "taking" of property by a police officer, but also when the officer assists in effectuating a repossession over the objection of a debtor or so intimidates a debtor as to cause him to refrain from exercising his legal right to resist a repossession . . . . . While mere acquiescence by the police to "stand by in the case of trouble" is insufficient to convert a repossession into state action, police intervention and aid in the repossession does constitute state action.

Id. Accordingly, the court found that factual issues concerning whether the police officer's involvement constituted state action precluded summary judgment. Id.

In Jones v. Guttschenritter, 909 F.2d 1208 (8th cir. 1990), the landlord of an office complex requested a police officer to be present for safety reasons while he disconnected, without a court order, his tenant's electrical service. Id. at

1209. The police officer, uniformed and armed, accompanied the landlord inside the complex, proceeded down the hallway located inside the unit the tenant was occupying, where he and the tenant saw each other. Id. The officer then proceeded to the warehouse area where the electrical service box for the tenant's unit was located. Id. The police officer stood guard several feet away while the landlord disconnected the tenant's electrical service. Id. The police officer never questioned either the landlord or the tenant concerning their rights to occupy the premises, the terms of the lease, or the existence of a court order. Id.

The tenant testified that the presence of the police officer caused him to be fearful and to refrain from attempting to stop the disconnection, but that had the officer not been present, he would have attempted to stop the disconnection. Id. at 1210. The district court granted a directed verdict in favor of the police officer on the section 1983 claim. Id. However, the United States Court of Appeals for the Eighth Circuit reversed, relying on Menchacha and Harris, holding that there was an issue for the trier of fact as to whether the police officer assisted in effectuating the disconnection of the electrical services, or so intimidated the tenant as to cause him to refrain from exercising his right to resist the disconnection. Id. at 1212. The court noted that the tenant saw the unformed police officer walk past his unit and proceed to the electrical box

before the electricity went off, and that the officer's presence was at the landlord's request, holding that the jury must decide whether the

> close proximity of [the officer] to [the tenant] when he disconnected Jones' electrical service could have engendered fear or intimidation, that the jury could have concluded that [the officer] was not simply present and standing by, but rather was lending police intervention and aid in the disconnection of Jones' electrical services, and that [the officer's] action constituted state action.

Id. at 1213.

Moreover, in Open Inns Ltd., counsel for the landlord of a hotel requested the county sheriff's department to serve a civil complaint seeking money damages for back rent on the landlord's tenant. Open Inns Ltd., 24 F.Supp.2d at 414. The supervisor of the county's civil unit, pursuant to county practice, authorized the service of the complaint at 1:00 a.m., and authorized overtime for two sheriff's officers to accompany the landlord and his attorney. Id. Upon arrival at the hotel, the attorney told the officers that the landlord intended to take possession of the hotel and wanted the officers to remain on the premises until he relieved them. Id. In his deposition, the night manager stated that he was intimidated by the presence of "the uniforms" and felt he had no choice but to "do what was requested to do or told to do." Id. at 416. The United States District Court for the Eastern District of Pennsylvania granted the plaintiff-lessee's motion for summary judgment, finding,

inter alia, that the sheriff's department officers' actions were unreasonable and therefore they were liable under section 1983. Id. at 424.

Significantly, all of the case law in which a colorable violation of an individual's rights under section 1983 during a private repossession with police present has been found have involved scenarios where the complainant was present and cognizant of the police presence. Moreover, those courts which have found state action when police officers are involved in a private repossession have emphasized that the actions of the police officers were such that they could have engendered fear and intimidation on the part of the plaintiffs. However, in the instant case, critically, no Plaintiff nor representative of any Plaintiff was even present during the incidents giving rise to this lawsuit. Accordingly, a highly significant, if not crucial, factor in finding state action under section 1983 is absent from this case.

Furthermore, in imposing liability under section 1983, as detailed above, courts require evidence of substantially more active participation on the part of police officers in private repossessions than that which is attributable to Officer Loisch and Rizzo. There is no evidence that Officers Rizzo or Loisch conspired with the private actors to violate Plaintiffs' rights. The defendants did not invite any of the police officers to

attend, observe, or assist in the repossession. Balka merely informed Officer Rizzo sometime before the incident that Defendant Mirrow intended to enter the store and remove the furs due to Plaintiffs' failure to comply with the lease. Officer Loisch was the only officer who was even present at the scene. Officer Loisch did not assist in breaking the locks on the property. In fact, Officer Loisch did not arrive until after the repossession had already begun, when he responded to a radio call for a burglary in progress. Officer Loisch's only contact with anyone at the scene was with Balka and Schwalb when he recorded information concerning their identities. Balka introduced himself to Loisch and informed him that he had already explained the situation to the police department. Loisch knew that Corporal Rizzo was aware of the situation, and decided to use Balka's cellular telephone to call Rizzo on his, Rizzo's, private line.

Pursuant to Rizzo's instructions, Officer Loisch remained on the premises to record what he observed, but he did not enter the premises. He did not assist anyone in entering the building or removing any merchandise. He remained on the scene for approximately thirty minutes and then returned to duty. Later, he filled in a Form 48 Incident Report regarding the incident.

Based on the above, we find that the actions of Rizzo

and Loisch did not even come close to amounting to the "sanctioning, permitting and facilitating (a) the ransacking of Plaintiffs' store by Mirrow, Balka, Tyson, Ruggiero and Schwalb; and (2) the misappropriation of valuable furs and inventory belonging to plaintiffs (sic) by Mirrow, Balka, Tyson, Ruggiero and Schwalb," as characterized by Plaintiffs. Am. Compl. at 15. Rather, the actions of the defendant police officers constituted little more than mere presence at the scene as in Abbott and Coleman, and certainly less than that of the officers in Sherry. As such, no state action for purposes of section 1983 existed, and summary judgment is granted with respect to Defendants Loisch and Rizzo on the section 1983 claim.

Accordingly, Plaintiffs 1983 claim against the private defendants must also fail. Plaintiffs assert that Defendants Mirrow, Balka, Ruggiero, Tyson and Schwalb are likewise liable under section 1983 because they "acted under color of state law by jointly acting with defendants Loisch, Rizzo and Levins in the ransacking of plaintiffs' (sic) store and misappropriation of valuable furs and inventory belonging to plaintiffs (sic). . . Because defendants . . . functioned as state actors, they wilfully, wrongfully and illegally violated plaintiffs' (sic) rights under the Fourth and Fourteenth Amendment (sic). . . ." Am. Compl. at 15.

It is true that "[a]ctions taken by private

individuals may be 'under color of state law' where there is 'significant state involvement in the action.'" Howerton v. Gabica, 708 F.2d 380, 382 (9th Cir. 1983). Moreover, "as police involvement becomes increasingly important, repossession by private individuals assumes the character of state action." Id. at 383. However, "the redress available under [section 1983] is limited and a private person will not be subjected to liability unless the alleged deprivation was committed under color of law." Sherry, 60 F.Supp.2d at 473. Moreover, in order to be found to be acting under color of state law under section 1983, the private actor must "wilfully participate in a joint conspiracy with state officials to deprive a person of a constitutional right . . ." Abbott, 164 F.3d at 147-8.

However, in the instant case, as explained above, Plaintiffs have failed to establish a conspiracy between the police officers and the private defendants. As such, the actions of the private defendants were not under color of state law, and therefore are not actionable under section 1983. Accordingly, summary judgment on the section 1983 claim is granted in favor of the private Defendants as well.

Having determined that no state action existed in this case sufficient to invoke section 1983, there is no basis for federal jurisdiction over the remaining state law claims. Therefore, this Court declines to exercise supplemental

jurisdiction over those claims, and they are dismissed without prejudice. See Woodson v. City of Philadelphia, 54 F.Supp.2d 445, 451 (E.D.Pa. 1999).

An appropriate Order follows.